

### **REMARKS/ARGUMENTS**

The Non-Final Office Action of September 5, 2008, has been reviewed and these remarks are responsive thereto. In the Office Action, claims 25-41 were pending. Upon entry of the present paper, claims 25-33 and 40 are amended, and claim 41 is canceled without prejudice or disclaimer. The pending claims were treated in the Office Action as follows:

- claims 40 and 41 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter
- claims 25-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over an alleged combination of Manish et al. (U.S. Patent No. 7,075,904) and Maggenti (U.S. Patent No. 6,633,765)

Applicant respectfully traverses these rejections.

Beginning with the rejection of claims 40-41 under 35 U.S.C. 101, the present paper cancels claim 41 without prejudice or disclaimer, and amends claim 40 to recite computer-readable medium language. This rejection is believed to be moot in view of the present amendments.

Turning to the rejection of claims 25-41 under 35 U.S.C. 103(a), Applicant submits that the pending claims are distinguishable over the alleged combination of Manish et al. and Maggenti. Independent claim 25 recites, among other features, the following (emphasis added):

said apparatus is configured to store received data in the cache until a predetermined condition is met and, in response to the meeting of this condition, to forward the data to said further hosts in said group, and wherein the processor is configured to limit the group to further hosts situated at the same location

The Office Action concedes that the primary reference, Manish et al., fails to teach or suggest this feature, but alleges that Maggenti shows this feature at col. 13, lines 23-29 and 36-52. Applicant respectfully disagrees.

The first cited portion of Maggenti, col. 13, lines 23-29, reads as follows:

In step 504, the base station waits for membership reports to be received from the various WCDs operating within the coverage area of the base station. As each membership report is received, the information associated with each report is stored in a memory

device within the base station. For example, at a minimum, an identification of the reported multicast group is stored.

This portion indicates that the base station has transmitted a membership query (see, e.g., Fig. 5, step 500) to wireless communication devices (WCDs) in a given coverage area in order to ascertain what multicast groups are to be served (col. 13, lines 3-8). The data stored in the base station 104 consists of messages from the WCDs identifying the multicast groups to which they belong (col. 13, lines 20-22). That membership information is not forwarded to “further hosts in said group,” as recited.

The Office Action contends that it would be an obvious modification to Maggenti to have the base station 104 store, in addition to the membership information, the actual multicast data to be sent to the members of the various groups, and then forward it on some predetermined condition. However, this is inconsistent with Maggenti’s teachings, and there is no rational reason why one of ordinary skill would choose to fundamentally change the principal of Maggenti’s operation in the manner alleged. Maggenti does not use the base station 104 for the distribution of that multicast information, or for caching it for a predetermined condition. To the contrary, Maggenti relies on other routers within the network 118 for the delivery of that information (col. 12, lines 54-67). The base station 104 simply uses the membership information to configure those routers so that they route the appropriate information to the appropriate WCDs. The base station 104 determines whether multicast services are required (col. 10, lines 26-32), compiles a list of active multicast groups for forwarding to the MSC 102 and to the individual routers (col. 2, lines 54-67) and compiling membership lists for transmission to each WCD to determine whether updating is required (col. 11, lines 31-48). Modifying Maggenti in the manner alleged would seem to ignore the actual teachings in that reference.

The other cited passage from Maggenti, cited to show the transmission in response to a predetermined condition, does not overcome this deficiency. Column 13, lines 36-52 reads as follows:

In step 506, the base station determines whether or not the base station countdown timer has expired. If not, the base station continues to wait for membership reports to be received, as shown in step 504. If the base station countdown timer has expired, the time for WCDs to respond to the last membership query has expired, and processing continues to step 508.

In one embodiment, in step 508, the base station generates a message indicating which multicast group(s) are desired for at least one WCD operating within the coverage area, or geographic region, of the base station. This step is an alternative to the embodiment wherein a message is generated each time a membership report is received, as described in step 504. The message is transmitted to MSC 102 and then to router 300 so that multicast information can be directed to the base station and WCDs which desire the multicast information.

The expiration of the countdown timer referenced in this passage merely precludes the storage and processing of further membership reports. The timer does not result in the transmission of the multicast information.

For at least these reasons, Applicant submits that claim 25 distinguishes over the applied references. Independent claim 33 recites the following:

waiting for a period of time until a predetermined condition is met where, if further requests for said file are received by the network element from one or more other hosts before the period of time expires, then said one or more other hosts are added to the group; and

forwarding the file to the first host and to any other hosts in said group, wherein the group is limited to the first host and other hosts situated at the same location as the first host

The “waiting ...” and “forwarding ...” features are distinguishable over the applied references for many of the same reasons discussed above with respect to claim 25. The remaining claims depend from either claim 25 or 33, and are distinguishable for at least the same reasons as their respective base independent claims, and further in view of the various features recited therein. For example, regarding claims 29, 30, 37 & 38, the Office Action cites Maggenti column 15 lines 32-42 as showing the transmission of data after a countdown timer expires. However, that passage refers to the generation of a membership report by the processor 702 of a WCD 700 for transmission to the base station 104 in the event that no other membership reports containing the same multicast group have been transmitted by other WCDs within a given time period. That timer acts as a means for preventing transmission by separate WCDs of membership reports specifying the same multicast group. If another WCD has transmitted such

a report, the countdown timer is reset. This does not, however, disclose the transmission of the multicast data in response to the expiration of the timer.

As another example, claims 31 and 32 recite a second communication path “separate from the first communication path,” and claim 39 recites a “second communication network,” and the Office Action cites Manish column 5, lines 51-59 for these features. That passage, however, merely notes that the multicast application server (MAS) 38 transmits multicast data to the radio network multicast router/server (RNMS) 26 via the packet switched network 36, and that data is then transmitted over the radio network to the various mobile stations 12, 14, 16. Meanwhile, column 4, lines 42-48 disclose that requests to join the multicast group are also transmitted via the radio network. Both of these transmissions are via the same network (the radio network), and there is no “second communication path” or “second communication network” as recited.

### **CONCLUSION**

For at least the reasons set forth above, Applicant submits that the pending claims distinguish over the applied art, and are in condition for allowance. However, if the Examiner believes that further discussion and/or amendment would be helpful, the Examiner is invited to telephone the Applicant’s undersigned representative.

Respectfully submitted,

Dated: December 3, 2008

By: /Steve Chang/  
Steve S. Chang  
Registration No. 42,402

Banner & Witcoff, Ltd.  
1100 13<sup>th</sup> St. N.W.  
Washington, D.C. 20005-4051  
Tel: (202) 824-3000  
Fax: (202) 824-3001